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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)

PP Docket No. 93-253

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF AMTECH CORPORATION

AMTECH Corporation ("AMTECH"), by its attorneys, hereby replies to those comments filed in the above-captioned proceeding that address the issue of whether competitive bidding under Section 309(j) of the Communications Act¹ should extend to automatic vehicle monitoring ("AVM") licensing. Accordingly, AMTECH will focus its reply to the comments of Hughes Transportation Management Systems ("Hughes"), PacTel Corporation ("PacTel"), and Southwestern Bell Corporation ("SWBell").

In its Notice of Proposed Rulemaking in this proceeding, the Commission noted its intent to delay action on the applicability of competitive bidding to AVM "because certain fundamental questions about the nature of this service are now being considered in [PR Docket 93-61]."² AMTECH, a leading manufacturer and installer of local-area AVM systems used for automatic toll-collection, rail car management, and

¹ 47 U.S.C. § 309(j).

² Implementation of Section 309(j) of the Communications Act Competitive Bidding, PR Docket 93-253, FCC 93-455 (October 12, 1993) ¶145 n.153 ("Notice").

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a variety of other applications, believes that this is the proper approach to this issue. Competitive bidding for AVM will not even be an issue if the Commission determines, as AMTECH has requested, to continue to license all AVM systems on a shared basis as it has done under the interim AVM rules. However, because several parties have opted to comment on the merits of whether competitive bidding should apply to AVM licensing, AMTECH offers the following reply comments.

I. LOCAL-AREA AVM SERVICES DO NOT AND WILL NOT MEET THE CRITERIA FOR THE APPLICATION OF COMPETITIVE BIDDING PROCEDURES

AMTECH concurs with the basic position of Hughes regarding the treatment of local-area AVM systems.³ Competitive bidding should not apply to the licensing of local-area AVM systems because all indications are that such facilities will continue to be authorized on a shared basis.⁴

³ As Hughes indicates, local-area AVM systems are localized, with maximum operations from each base station of several hundred feet or less. Wide-area AVM systems typically involve multilateration and operate over distances of thousands of yards to several miles.

⁴ AMTECH does not agree with Hughes' characterization of the record created in PR Docket 93-61 as to which Hughes asserts that those parties urging the use of the AVM designations "wide-area" and "local-area" have also proposed the allocation of separate channels for wide-area and local-area AVM systems. See Comments of Hughes, PP Docket No. 93-253 (filed Nov. 10, 1993) at 2 n.1 ("Hughes Comments"). AMTECH and others have proposed that wide-area and local-area systems be allocated on a co-primary shared basis throughout the 902-928 MHz band. See Comments of AMTECH Corporation, PR (continued...)

The basic prerequisite for competitive bidding is the existence of mutually exclusive applications. 47 U.S.C. § 309(j)(1). The Commission in Docket 93-61 has proposed that local-area systems be authorized on a shared-use, non-exclusive basis.⁵ While there are outstanding issues concerning the size and nature of the spectrum band in which local-area AVM systems will be licensed, AMTECH, Hughes, and all other parties commenting on this issue in Docket 93-61 agreed with the shared spectrum proposal regarding local-area AVM licensing. Accordingly, local-area AVM licensing likely will fail to qualify for competitive bidding.⁶

⁴(...continued)
Docket 93-61 (filed June 29, 1993); Comments of Pinpoint Corporation, PR Docket 93-61 (filed June 29, 1993); Reply Comments of Mark IV Industries, Ltd., PR Docket 93-61 (filed July 29, 1993). In addition, by supporting the general position taken by Hughes on competitive bidding, AMTECH does not necessarily join in the antenna height and power limitations recommended by Hughes in its comments in PR Docket 93-61, to which Hughes refers in this proceeding. See Hughes Comments at 4 n.2.

⁵ Automatic Vehicle Monitoring Systems, 8 F.C.C. Rcd 2502, 2507 (1993).

⁶ In the unlikely event that the Commission determines to authorize local-area AVM service on an exclusive basis, AMTECH concurs in Hughes' observation that a large number of existing and planned local-area AVM systems support traffic and vehicle management initiative undertaken by government entities that are themselves the licensees. See Hughes Comments at 5. Moreover, as Hughes' notes, while commercial local-area applications do exist, a majority of those qualify as private services under the Commission's proposed rules for competitive bidding. Indeed, the largest application of AVM technology to date, the equipping of all North American railroad cars with AMTECH tags, relates solely
(continued...)

II. SHOULD THE COMMISSION GRANT WIDE-AREA AVM SYSTEMS ON AN EXCLUSIVE BASIS, COMPETITIVE BIDDING SHOULD APPLY TO THE LICENSING OF WIDE-AREA AVM SYSTEMS

AMTECH, in its comments in Docket 93-61, proposed that the Commission license all AVM systems, both local-area and wide-area, on a shared-use basis throughout the 902-928 MHz band, as it has under the interim rules in the 904-912 and 918-926 MHz sub-bands. See 47 C.F.R. § 93.209. It is AMTECH's position that the record in that proceeding supports the adoption of such a band plan. However, should the Commission determine to allocate separate sub-bands for local-area and wide-area AVM systems -- and to license wide-area systems on an exclusive basis within their respective sub-bands -- the licensing of wide-area AVM systems should be through a competitive bidding process.

PacTel and SWBell, advocates of exclusive licensing within wide-area-only sub-bands, argue to the contrary. However, their positions are inconsistent with a plain and common-sensical reading of Section 309(j) of the

⁶(...continued)
to private management of mobile resources. Similarly private services initiatives are being undertaken by the trucking and intermodal shipping industries. Finally, AMTECH concurs in Hughes' analysis that where local-area AVM facilities are used to assess fees to members of the public for particular services, the spectrum is being used merely to facilitate collection for a separate service unrelated to the transmission of radio signals. See id. at 6. (As explained in greater detail below, AMTECH does not agree with Hughes that government radiolocation is the "principal use" of the spectrum at issue.)

Communications Act, as advocated by the Commission in its Notice in the instant proceeding. The principal argument of both parties is that competitive bidding would not apply because AVM operations will remain secondary to government radiolocation facilities and industrial, scientific and medical ("ISM") devices, such that truly exclusive use by wide-area systems could not be a reality. See Comments of PacTel, PP Docket No. 93-253 (filed November 10, 1993) at 12; Comments of SWBell, PP Docket No. 93-253 (filed November 10, 1993) at 14.

Nothing in the statute nor the Commission's Notice supports the extreme limitation on the applicability of competitive bidding sought by PacTel and SWBell. The critical inquiry is not whether there will be exclusivity in the "pure" sense that PacTel and SWBell suggest, but whether "mutually exclusive applications [will be] accepted for filing." 47 U.S.C. § 309(j)(1); see also Notice, ¶ 22. If the licensing schemes proposed by PacTel or SWBell are adopted (only one AVM system per market in a given wide-area-only sub-band), there will be the distinct potential for mutually exclusive applications accepted for filing, the secondary status of AVM relative to the government and ISM notwithstanding. For example, PacTel's proposal would support only two wide-area systems per market, whereas at least five wide-area system developers have been active

participants in PR Docket No. 93-61: PacTel, SWBell, MobileVision, Pinpoint, and Location Services. SWBell's band plan would accommodate only four. Thus the potential application of competitive bidding will be triggered under either such licensing scheme proposed by these commenters.

The second criterion is whether the "principal use" of the spectrum by the licensees "will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers" in return for communications services provided over the spectrum being authorized. 47 U.S.C. § 309(j)(2). Licensing of wide-area systems as proposed by PacTel and SWBell will meet this criterion. Neither PacTel nor SWBell contend that their proposed services will not involve the "provision of service to subscribers for compensation." Rather, PacTel asserts that the principal use of the band will not be for the provision of services to subscribers because the allocation to government radiolocation is primary relative to AVM.⁷

Not only does the assertion fail to follow the premise, it is beside the point. In the first place, Section 309(j)(3) of the Act speaks of "principal use" in terms of Commission-defined classes of licenses and permits.

⁷ SWBell merely notes that the spectrum will not be used "exclusively" for the provision of services to subscribers. Comments of SWBell at 14. As discussed above, "principal use", not "exclusive use", is the test.

Concomitantly, the Commission has proposed that the proper inquiry to determine the applicability of competitive bidding is whether the "principal use of a service or class of service" is for services with paying subscribers. Notice, ¶ 32. Thus, the primary status of government radiolocation -- which is not regulated by Commission licensing -- relative to AVM is irrelevant to the determination of whether the exclusive licensing by the FCC of wide-area AVM systems should be subject to competitive bidding. The proper question would be whether the "principal use" of the wide-area-only sub-bands by wide-area AVM licensees is for provision of service to paying subscribers. The answer would be yes.

In the second place, even if government radiolocation were to be included in the mix with wide-area AVM, it is AMTECH's understanding that the government has not made extensive use of this band.⁸ Accordingly, it is "reasonably likely" that the "principal use" of any wide-area-only sub-bands would be by paying subscribers, thereby triggering competitive bidding.⁹

⁸ If the government had made extensive use of the band, it is extremely unlikely that PacTel or SWBell would be so interested in the spectrum given their contentions concerning the need for use of the spectrum they seek without the potential for interference from other users.

⁹ In the unlikely event that the Commission were to determine that government radiolocation should be included in
(continued...)

III. CONCLUSION

For the foregoing reasons, the Commission should defer consideration of the applicability of competitive bidding to AVM until after the completion of Docket 93-61. However, it is AMTECH's position at this time that the FCC not adopt competitive bidding for the licensing of local-area AVM systems. Furthermore, in the event that the Commission determines in PR Docket 93-61 to license wide-area only systems in separate sub-bands on an exclusive basis, as proposed by PacTel and SWBell, such licensing should be pursuant to competitive bidding, consistent with Section 309(j) of the Communications Act.

Respectfully submitted,

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⁹(...continued)
the mix with wide-area AVM to determine principal use, the FCC cannot on the current record in this proceeding or Docket 93-61 conclude that the principal use of the spectrum will be for services other than those provided to paying subscribers.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 1993, I caused copies of the foregoing "Reply Comments of AMTECH Corporation" to be mailed via first-class postage prepaid mail to the following:

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